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9

10 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 2007-314

14 NICHOLAS PAUL ALLEN, R.N.  
827 Stacey Avenue  
15 El Centro, CA 92243

**DEFAULT DECISION**  
**AND ORDER**

16 Registered Nurse License No. 625579

[Gov. Code, §11520]

17 Respondent.  
18

19 **FINDINGS OF FACT**

20 1. On or about June 27, 2007, Complainant Ruth Ann Terry, M.P.H., R.N., in her  
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
22 Consumer Affairs, filed Accusation No. 2007-314 against Nicholas Paul Allen, R.N.  
23 (Respondent) before the Board of Registered Nursing.

24 2. On or about September 8, 2003, the Board of Registered Nursing (Board) issued  
25 Registered Nurse License No. 625579 to Respondent. The registered nurse license was in full  
26 force and effect at all times relevant to the charges brought herein and will expire on February  
27 28, 2009, unless renewed.

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1           3.       On or about July 2, 2007, Tess Bautista, an employee of the Department of  
2 Justice, served by Certified and First Class Mail a copy of the Accusation No. 2007-314,  
3 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code  
4 sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which  
5 was and is 827 Stacey Avenue, El Centro, CA 92243. A copy of the Accusation, the related  
6 documents, and Declaration of Service are attached as exhibit A, and are incorporated herein by  
7 reference.

8           4.       Service of the Accusation was effective as a matter of law under the provisions of  
9 Government Code section 11505, subdivision (c).

10          5.       Government Code section 11506 states, in pertinent part:

11           “(a) Within 15 days after service of the accusation the respondent may file with the  
12 agency a notice of defense. . .

13           “(b) Within the time specified respondent may file one or more notices of defense upon  
14 any or all of these grounds but all of these notices shall be filed within that period unless the  
15 agency in its discretion authorizes the filing of a later notice.

16           “(c) . . .[f]ailure to file a notice of defense shall constitute a waiver of respondent's right  
17 to a hearing. . .

18           “. . . .”

19          6.       Respondent failed to file a Notice of Defense within 15 days after service upon  
20 him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation  
21 No. 2007-314. See the declaration of Deputy Attorney General Susan Fitzgerald, attached as  
22 exhibit B, and incorporated herein by reference.

23          7.       California Government Code section 11520 states, in pertinent part:

24           “(a) If the respondent either fails to file a notice of defense or to appear at the hearing,  
25 the agency may take action based upon the respondent's express admissions or upon other  
26 evidence and affidavits may be used as evidence without any notice to respondent.”

27          8.       Pursuant to its authority under Government Code section 11520, the Board finds  
28 Respondent is in default. The Board will take action without further hearing and, based on

1 Respondent's express admissions by way of default and the evidence before it, contained in  
2 exhibits A and B and attachments thereto, finds that the allegations in Accusation No. 2007-314  
3 are true.

4 9. The total costs for investigation and enforcement are \$2,432.75 as of August 22,  
5 2007. (See Declaration of Susan Fitzgerald and exhibits 1 through 4, attached as exhibit B and  
6 incorporated by reference.)

#### 7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent Nicholas Paul Allen, R.N.  
9 has subjected his Registered Nurse License No. 625579 to discipline.

10 2. A copy of the Accusation and the related documents and Declaration of Service  
11 are attached.

12 3. The agency has jurisdiction to adjudicate this case by default.

13 4. The Board of Registered Nursing is authorized to revoke Respondent's Registered  
14 Nurse License based upon the following violations alleged in the Accusation:

15 a. Diversion and self-administration of controlled substances, a violation of Business  
16 & Professions Code section 2761(a) in conjunction with section 2762(a); and

17 b. Conviction of a crime substantially related to the qualifications, functions, or  
18 duties of a registered nurse, a violation of Business & Professions Code section 2761(f).

#### 19 ORDER

20 IT IS SO ORDERED that Registered Nurse License No. 625579, heretofore issued to  
21 Respondent Nicholas Paul Allen, R.N., is revoked.

22 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
23 written motion requesting that the Decision be vacated and stating the grounds relied on  
24 within seven (7) days after service of the Decision on Respondent. The agency in its discretion

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1 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the  
2 statute.

3 This Decision shall become effective on November 18, 2007.

4 It is so ORDERED October 18, 2007

5  
6 *LaTranene M. Tate*

7 FOR THE BOARD OF REGISTERED NURSING  
8 DEPARTMENT OF CONSUMER AFFAIRS

9 Attachments:

10 Exhibit A: Accusation No. 2007-314, Related Documents, and Declaration of Service  
11 Exhibit B: Declaration of Susan Fitzgerald and attachments

12 DOJ docket number: SD2007801137  
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Exhibit A

Accusation No. 2007-314,  
Related Documents and Declaration of Service

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 MARGARET ANN LAFKO  
Supervising Deputy Attorney General  
3 SUSAN L. FITZGERALD, State Bar No. 112278  
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13 In the Matter of the Accusation Against:

Case No. 2007-314

14 NICHOLAS PAUL ALLEN  
827 Stacey Avenue  
15 El Centro, CA 92243

**A C C U S A T I O N**

16 Registered Nurse License No. 625579

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation solely in  
22 her official capacity as the Executive Officer of the Board of Registered Nursing ("Board"),  
23 Department of Consumer Affairs.

24 2. On or about September 8, 2003, the Board issued Registered Nurse License  
25 Number 625579 to Nicholas Paul Allen ("Respondent"). Respondent's registered nurse license  
26 was in full force and effect at all times relevant to the charges brought herein and will expire on  
27 February 28, 2009, unless renewed.

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1 (b) If a committee determines that a registered nurse, who is denied  
2 admission into the program or terminated from the program, presents a threat to  
3 the public or his or her own health and safety, the committee shall report the name  
4 and license number, along with a copy of all diversion records for that registered nurse, to  
5 the board's enforcement program. The board may use any of the records it receives under  
6 this subdivision in any disciplinary proceeding.

7 8. Health and Safety Code section 11173, subdivision (a), states, in pertinent  
8 part:

9 No person shall obtain or attempt to obtain controlled substances, or  
10 procure or attempt to procure the administration of or prescription for controlled  
11 substances, (1) by fraud, deceit, misrepresentation, or subterfuge . . .

### 12 Cost Recovery

13 9. Code section 125.3 provides, in pertinent part, that the Board may request the  
14 administrative law judge to direct a licentiate found to have committed a violation or violations  
15 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
16 enforcement of the case.

### 17 CONTROLLED SUBSTANCES AT ISSUE

18 10. "Morphine" is a Schedule II controlled substance as designated by Health and  
19 Safety Code section 11055, subdivision (b)(1)(M).

20 11. "Marijuana" is a Schedule I controlled substance as designated by Health and  
21 Safety Code section 11054, subdivision (d)(13).

22 12. "Oxazepam" is a Schedule IV controlled substance as designated by Health and  
23 Safety Code section 11057, subdivision (d)(23).

### 24 CHARGES AND ALLEGATIONS

#### 25 FIRST CAUSE FOR DISCIPLINE

#### 26 (Diversion and Self-Administration of Controlled Substances)

27 13. Respondent is subject to disciplinary action pursuant to Code section 2761(a), for  
28 unprofessional conduct, as defined by Code section 2762, subdivision (a), because Respondent  
did the following:

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1 **Diversion of Controlled Substances:**

2 a. In and between April 2004, and December 2004, while employed and/or on duty  
3 as a registered nurse at Pioneers Memorial Hospital, Brawley, California, Respondent obtained  
4 morphine by fraud, deceit, misrepresentation, or subterfuge, in violation of Health and Safety  
5 Code section 11173, subdivision (a). Respondent removed morphine from the hospital supply  
6 (the ER Pyxis system) for his own personal use and injected himself with the medication two to  
7 three times a week.

8 **Self-Administration of Controlled Substances:**

9 b. In and between April 2004, and December 2004, Respondent self-administered  
10 the controlled substance morphine, as set forth in subparagraph (a) above, without lawful  
11 authority therefor.

12 c. In and between June 2004, and December 2004, Respondent self-administered the  
13 controlled substances marijuana and oxazepam without lawful authority therefor, as follows:  
14 Beginning in approximately April 2004, Respondent was ordered by the Imperial County  
15 Superior Court, in the family law-custody proceeding titled *Nicolas Allen v. Linda Allen*, Case  
16 No. S.C. 97734, to submit to drug testing approximately every 30 days for one year. In or about  
17 June 2004, July 2004, November 2004, and December 2004, Respondent submitted urine  
18 samples for drug testing and tested positive for marijuana. Respondent also tested positive for  
19 oxazepam in November 2004.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct: June 19, 2007 Conviction for Receiving Stolen Property**  
22 **Incident Date: April 6, 2007)**

23 14. Respondent is subject to disciplinary action pursuant to Code section 2761(f), for  
24 unprofessional conduct for conviction of a crime substantially related to the qualifications,  
25 functions, or duties of a licensee, as more particularly alleged below:

26 a. On or about June 19, 2007 in Imperial County Superior Court case no. JCF19738 ,  
27 *People v. Nicholas Paul Allen*, Respondent was convicted on a plea of nolo contendere to a  
28 felony, violation Penal Code §496(a) (receiving stolen property).

b. Respondent was sentenced to three years formal probation, 63 days in county jail with credit for 63 days, to attend and complete a drug/alcohol treatment program, and to pay various fines and fees, among other terms.

c. In consideration of his plea, the remaining counts in the complaint were dismissed, as was another case (JCF-19756) alleging forgery.

d. The facts and circumstances surrounding the conviction involve Respondent's violation of a domestic violence court order and burglary.

**FACTOR IN AGGRAVATION**

**(Respondent's Termination from Board's Diversion Program as a Public Risk)**

15. On or about March 18, 2005, Respondent was enrolled in the Board's Diversion Program. On or about February 23, 2007, the Diversion Evaluation Committee ("DEC") terminated Respondent from the Diversion Program as a public risk. The DEC found that Respondent had numerous non-compliance issues. Further, Respondent was directed by the DEC on January 16, 2007, to enter inpatient treatment, but failed to do so.

## **PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 625579, issued to Nicholas Paul Allen;

2. Ordering Nicholas Paul Allen to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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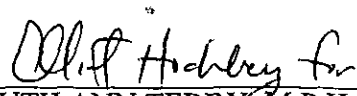
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3. Taking such other and further action as deemed necessary and proper.

DATED: 6/27/07.

  
RUTH ANN TERRY, M.P.H., R.N.  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

Complainant